

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 15, 2005 Session

CITY OF GALLATIN v. LYNDELL M. WEBB

Appeal from the Circuit Court for Sumner County
No. 25823-C C.L. Rogers, Judge

No. M2004-02468-COA-R3-CV - Filed May 12, 2006

This appeal involves a belated challenge to a reckless driving conviction in the Gallatin Municipal Court. Five years after the conviction, while facing sanctions under the Motor Vehicle Habitual Offenders Act, the motorist filed a petition in the Gallatin Municipal Court seeking to expunge or remove this conviction. The city court dismissed the petition, and the motorist appealed to the Circuit Court for Sumner County. The trial court, treating the petition as a petition for a common-law writ of certiorari, dismissed the petition because it had not been filed within ten days following the conviction as required by Tenn. Code Ann. § 27-5-101 (2000). The motorist has appealed. We affirm the dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Kimberley L. Reed-Bracey, Goodlettsville, Tennessee, for the appellant, Lyndell Webb.

Joe H. Thompson, Gallatin, Tennessee, for the appellee, City of Gallatin.

OPINION

I.

On October 19, 1999, Lyndell Webb received a citation for speeding in a school zone¹ and reckless driving² as he was returning home from work in the City of Gallatin. The citation instructed Mr. Webb to appear in the Gallatin Municipal Court on November 12, 1999 at 8:00 a.m. Mr. Webb failed to appear in court at the appointed time. However, he arrived at court later in the afternoon after court had adjourned. After speaking with a court employee, Mr. Webb paid an \$86 fine and considered the matter resolved. By paying the fine, Mr. Webb was deemed to have admitted that he was guilty of reckless driving, and he was placed on probation for six months.

¹Gallatin Mun. Code § 16-137(c) (1979).

²Gallatin Mun. Code § 16-101 (1979).

In 2004, the State of Tennessee initiated proceedings against Mr. Webb under the Motor Vehicle Habitual Offenders Act [Tenn. Code Ann. §§ 55-10-601 to -618 (2004 & Supp. 2005)]. One of the past convictions on which the State's petition was based was Mr. Webb's 1999 reckless driving conviction.³ Mr. Webb insisted that prior to the habitual offender proceeding, he had been unaware that his payment of the \$86 fine in 1999 would be considered an admission of guilt or that he had been convicted of reckless driving. When he attempted to challenge the 1999 reckless driving conviction, the court informed him that he could not collaterally attack the conviction in the habitual offender proceeding. The court also informed Mr. Webb that he could seek a modification of his habitual offender adjudication if he was successful in challenging one of the underlying convictions in another proceeding.

By 2004, the passage of time had limited the avenues available to Mr. Webb to challenge his 1999 reckless driving conviction.⁴ On July 19, 2004, Mr. Webb filed a "Petition to Dismiss and Expunge/Remove Erroneous Conviction" in the Gallatin Municipal Court. He asserted that the 1999 proceedings had been criminal rather than civil in nature and that he had not been afforded due process or other applicable constitutional protections. On July 27, 2004, the municipal court dismissed Mr. Webb's petition on its own motion because it had not been timely filed. Mr. Webb appealed the dismissal of his petition to the Circuit Court for Sumner County. Following a hearing on September 10, 2004, the trial court filed an order upholding the dismissal of Mr. Webb's challenge to his 1999 conviction because it had not been filed within ten days after the judgment as required by Tenn. Code Ann. § 27-5-101.⁵

Mr. Webb filed a timely Tenn. R. Civ. P. 59.04 motion,⁶ and, during an October 8, 2004 hearing on the motion, asserted that the trial court should have treated his original petition as a

³Reckless driving is one of the offenses that can be used to support a determination that a driver is a habitual offender under the Motor Vehicle Habitual Offenders Act. Tenn. Code Ann. § 55-10-603(2)(A)(xi).

⁴The appropriate vehicles for challenging the reckless driving conviction would have been (1) a direct appeal to circuit court under Tenn. Code Ann. § 27-5-101 (2003) or (2) a petition for post-conviction relief under Tenn. Code Ann. § 40-30-101 to -122 (2003). *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004) (holding that "[a] petition for post-conviction relief is the procedural avenue for attacking . . . convictions or sentences that are either void or voidable because of the abridgment of constitutional rights"); *State v. Godsey*, 165 S.W.3d 667, 673-74 (Tenn. Crim. App. 2004). Petitions for post-conviction relief must be filed within one year after the judgment being challenged became final. Tenn. Code Ann. § 40-30-102(a).

⁵Tenn. Code Ann. § 27-5-101 states:

Any person dissatisfied with the judgment of a recorder or other officer of a municipality charged with the conduct of trials, in a civil action, may, within ten (10) entire days thereafter, Sundays exclusive, appeal to the next term of circuit court.

⁶The practically unintelligible title of Mr. Webb's motion was "Motion to Reconsider and For the Court to Rule on Writ of Certiorari Prior Titled Petition to Overturn, Dismiss, and Expunge Conviction for Constitutional And Due Process Violations." This court analyzes pleadings and motions in light of their substance rather than their title or form. *Harris v. State*, 102 S.W.3d 587, 593 (Tenn. 2003); *Mitchell v. Owens*, 185 S.W.3d 837, 839 (Tenn. Ct. App. 2005); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 300 (Tenn. Ct. App. 2001). The relief being sought in the motion is akin to the relief available under Tenn. R. Civ. P. 59.04.

petition for common-law writ of certiorari. On October 18, 2004, the trial court entered an order denying Mr. Webb's requested relief. Mr. Webb appealed to this court.

II.

Both in the trial court and in this court, Mr. Webb insisted that his petition challenging his 1999 reckless driving conviction should be construed as a petition for common-law writ of certiorari. We will accede to his request. Therefore, we will review the trial court's decision to deny Mr. Webb's petition using the standard of review applicable to decisions either granting or denying writs of common-law certiorari.

A common-law writ of certiorari is an extraordinary judicial remedy. *Robinson v. Clement*, 65 S.W.3d 632, 635 (Tenn. Ct. App. 2001); *Fite v. State Bd. of Paroles*, 925 S.W.2d 543, 544 (Tenn. Ct. App. 1996). It is not available as a matter of right, *Boyce v. Williams*, 215 Tenn. 704, 713-14, 389 S.W.2d 272, 277 (1965); *Hall v. McLesky*, 83 S.W.3d 752, 757 (Tenn. Ct. App. 2001), but rather is addressed to the trial court's discretion. *Biggs v. Memphis Loan & Thrift Co.*, 215 Tenn. 294, 302, 385 S.W.2d 118, 122 (1964); *Blackmon v. Tennessee Bd. of Paroles*, 29 S.W.3d 875, 878 (Tenn. Ct. App. 2000). Accordingly, decisions to grant or deny a common-law writ of certiorari are reviewed using the familiar "abuse of discretion" standard. *Robinson v. Traughber*, 13 S.W.3d 361, 364 (Tenn. Ct. App. 1999). Under this standard, a reviewing court should not reverse a trial court's discretionary decision unless the trial court has applied an incorrect legal standard, reached an illogical decision, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that causes an injustice to the complaining party. *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22, 42 (Tenn. 2005); *Mercer v. Vanderbilt Univ.*, 134 S.W.3d 121, 131 (Tenn. 2004).

The scope of review under a common-law writ of certiorari is extremely limited. Courts may not (1) inquire into the intrinsic correctness of the lower tribunal's decision, *Arnold v. Tennessee Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997); *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994), (2) reweigh the evidence, *Watts v. Civil Serv. Bd. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980); *Hoover, Inc. v. Metropolitan Bd. of Zoning Appeals*, 924 S.W.2d 900, 904 (Tenn. Ct. App. 1996), or (3) substitute their judgment for that of the lower tribunal. *421 Corp. v. Metropolitan Gov't*, 36 S.W.3d 469, 474 (Tenn. Ct. App. 2000). Rather, the writ permits the courts to examine the lower tribunal's decision to determine whether the tribunal exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. *Turner v. Tennessee Bd. of Paroles*, 993 S.W.2d 78, 80 (Tenn. Ct. App. 1999); *Daniels v. Traughber*, 984 S.W.2d 918, 924 (Tenn. Ct. App. 1998).

III.

A common-law writ of certiorari is not available unless the party seeking the writ has no other plain, speedy, or adequate remedy. Tenn. Code Ann. § 27-8-101 (2000). The same rule applies when a party has not availed itself of available judicial remedies, unless the party demonstrates that it was prevented from pursuing these remedies by (1) oppressive or onerous acts of the lower court, (2) willful or negligent acts of the lower court's clerk, (3) wrongful acts by the

adverse party, (4) inevitable accident, or (5) blameless misfortune. *McMurry v. Milan*, 32 Tenn. (2 Swan) 176, 178-79 (1852); *Jasper Engine & Transmission Exchange v. Mills*, 911 S.W.2d 719, 720 (Tenn. Ct. App. 1995); *Jones Motor Co. v. Carr*, 10 Tenn. App. 179, 182-83 (1929). No matter how meritorious a party's claims may be, it is proper to dismiss the party's petition for common-law writ of certiorari if the party fails to show some good and sufficient reason for failing to pursue the remedies that had been available. *Ammons v. Coker*, 124 Tenn. 676, 682, 139 S.W. 732, 733 (1911).

Mr. Webb had two well-established remedies available to him to challenge his 1999 reckless driving conviction. He could have sought direct appellate review under Tenn. Code Ann. § 27-5-101, or he could have collaterally attacked the conviction by filing a petition for post-judgment relief. He did neither, and these avenues are no longer available to him because he waited too long to pursue them.

Mr. Webb's explanation for his failure to pursue these remedies consists of his protestations that he did not understand the legal consequences of paying the \$86 fine in 1999. He asserts that he believed the only consequence of his decision not to contest the reckless driving citation was the payment of the fine because some unidentified court employee told him that the citation would not appear on his record if he paid the fine. He also insists that he was never informed that his payment of the fine would be deemed to be an admission of guilt, that he had been convicted of reckless driving, or that he had been placed on probation for six months.

Parties who seek a common-law writ of certiorari after failing to take advantage of the other judicial remedies available to them must demonstrate that their failure to pursue the other available remedies was not the result of a lack of diligence on their part. *See Biggs v. Memphis Loan & Thrift Co.*, 215 Tenn. at 304, 385 S.W.2d at 123. The trial court concluded that Mr. Webb had failed to explain satisfactorily why he failed to file a timely appeal under Tenn. Code Ann. § 25-5-101. Based on the limited scope of review governing the denial of petitions for common-law writs of certiorari, we find no basis in this record to second-guess the trial court's decision.

IV.

We affirm the dismissal of Mr. Webb's petition and remand this case to the trial court for any further proceedings consistent with this opinion. We tax the costs of this appeal to Lyndell Webb and his surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.